

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DAMON T. WILSON, #1437943	§	
VS.	§	CIVIL ACTION NO. 6:16cv297
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Damon T. Wilson, a prisoner confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed without prejudice for lack of subject matter jurisdiction. More specifically, the petition is a successive petition, and Petitioner has not shown that he has received permission from the Fifth Circuit to file a second or successive petition.

Petitioner has filed objections. He asserts that he is not challenging his conviction; instead, he is complaining that the Parole Board has incorrect information on him about his conviction. However, Magistrate Judge Love appropriately observed in the Report and Recommendation that Petitioner's assertion that the Parole Board has incorrect information on him is based on the claim that the charges for which he was convicted are false. As such, his petition is a *de facto* challenge to his conviction. His objections lack merit.

Nonetheless, assuming *arguendo* that the Petitioner could bring a new petition regarding information contained in his parole file, the petition would still have to be dismissed. Prisoners have no liberty interest in obtaining parole in the State of Texas; thus, they cannot complain about the

“procedural devices attendant to parole decisions.” *Orellana v. Kyle*, 65 F.3d 29, 32 (5th Cir. 1995) (cannot challenge information in parole file as false). *See Toney v. Owens*, 779 F.3d 330, 331-32 (5th Cir. 2015) (cannot challenge sex offender classification in parole file because there is no liberty interest in parole).

The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Report and Recommendation (docket entry #6) is **ADOPTED**. It is further

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for lack of subject matter jurisdiction. A certificate of appealability is **DENIED**. All motions not previously ruled on are hereby **DENIED**. It is finally

ORDERED that the Clerk of Court shall return unfiled any new petitions for a writ of habeas corpus submitted by Petitioner regarding his conviction unless he shows that he received permission from the Fifth Circuit to file it.

It is SO ORDERED.

SIGNED this 22nd day of April, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE